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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/631,000	08/02/2000	Michael L. Blomquist	9015.135US01	8019
23552	7590	07/23/2009		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER KOPPIKAR, VIVEK D	
			ART UNIT 3686	PAPER NUMBER
			MAIL DATE 07/23/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/631,000

**Applicant(s)**

BLOMQUIST, MICHAEL L.

**Examiner**

VIVEK D. KOPPIKAR

**Art Unit**

3686

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 5/26/09.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19, 23, 24 and 26-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 23, 24 and 26-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CC)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Status of the Application***

1. Claims 1-19, 23-24 and 26-32 have been examined in this application. The Final Office Action mailed on June 22, 2009 has been withdrawn and this Non-Final office action is being issued in its place.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-6, 16-19, 16-19 and 32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed towards a method for creating a library of pump data on a computer having a database but the claims do not positively recite a device (e.g. a computer) which is used for carrying out the method. In these claims, the recited term “database” could be a piece of paper attached to a computer. Therefore, these claims are not tied to a statutory class of invention. In order to overcome this rejection, the Office recommends amending the claims so that they recite a device (e.g. a computer) which is used in carrying out the claimed method. The applicants are reminded, however, that any amendment(s) to the claim(s) must have support in the specification as it was originally filed.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 is attempting to claim two different statutory classes of invention and therefore this renders the claim indefinite because it is not clear what claim 6 is directed to a product or a process. Appropriate correction and/or clarification is required. For the purposes of examination, the Office will interpret this claim as being directed towards a product.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 6-19 and 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,788,669 to Peterson in view of US Patent Number 5,713,856 to Eggers in view of in view of Official Notice and in even further view of US Patent Number 5,658,250 to Blomquist.

(A) As per claim 1, Peterson discloses a method for creating a library of pump data on a computer having a database, the pump data being organized into sets of program data, each set of program data being available for batch downloading to a medical pump and including data items for controlling operation of the medical pump, the method comprising:  
the plurality of data items forming a set of program data, (col. 4, lines 10-18 and lines 36-53).

Peterson teaches parameters (Col. 1, Ln. 20-21). In Peterson the memory is within the pump (Figure 1 and Col. 3, Ln. 50-65).

Peterson does not explicitly disclose at least some of the data items establishing parameters for controlling operation of a medical pump entering a plurality of data items into a database on the computer.

However, Eggers discloses at least some of the data items establishing parameters for controlling operation of a medical pump (i.e. drug libraries customized for each user ...) (col. 10, line 62 - col. 11, line 45) entering a plurality of data being patient-specific data items into a database on the computer, and assigning at least one data key to the set of program data, the data key identifying the set of program data (i.e. drug libraries customized for each user ...)(col. 10, line 62 - col. 11, line 45). Eggers also teaches the following: batch-downloading the plurality of data items into the memory within the pump and controlling operation of the pump based on one or more data items (Eggers: Col. 10, Ln. 62-Col. 11, Ln. 7). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include at least some of the data items establishing parameters for controlling operation of a medical pump, entering a plurality of data items into a database on the computer as disclosed by Eggers within the Peterson system for the motivation of downloading complicated drug delivery profiles to the system (col. 2, lines 3-10 and col. 11, lines 14-20).

Peterson and Eggers do not explicitly disclose assigning at least one data key to the set of program data, the data key identifying the set of program data. However, the Examiner takes official notice that it was well known in the database arts to assign identifiers to data sets. The purpose of using identifiers was to locate the particular data that is to be utilized by a user or

program. It would have been obvious to one of ordinary skill in the art at the time of Applicants invention to include assigning at least one data key to the set of program data, the data key identifying the set of program data within Peterson and Eggers for the motivation stated above.

The combined teachings of Peterson in view of Eggers in view of Official Notice do not teach or suggest individualized, patient-specific data items, however, this feature is taught in Blomquist (Col. 11, Ln. 64-Col. 12, Ln. 10). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined teachings of Peterson in view of Eggers in view of Official Notice with these aforementioned teachings from Blomquist with the motivation of having a means of allowing a user to download applications into a pump's flash memory without having to enter the information through a keyboard, as recited in Blomquist (Col. 12, Ln. 4-11).

(B) As to claim 2, Peterson does not explicitly disclose the method of claim 1 wherein the acts of:

entering a plurality of data items into a database includes entering the plurality of data items into a program data record in the database.

However, Eggers discloses entering a plurality of data items into a database includes entering the plurality of data items into a program data record in the database (i.e. drug library (Col. 2, Ln. 3-10 and Col. 11, Ln. 14-26). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include entering a plurality of data items into a database includes entering the plurality of data items into a program data record in the database as disclosed by Eggers within the Peterson system for the motivation of

downloading complicated drug delivery profiles to the system (col. 2, lines 3-10 and col. 11, lines 14-2). Peterson and Eggers do not explicitly disclose assigning at least one data key to the set of program data includes entering the data key into a data key record and linking the data key record to the program data record.

However, the Examiner takes official notice that it was well known in the database arts to assign identifiers to data sets and linking data key records to application programs.. The purpose of using identifiers was to locate the particular data that is to be utilized by a user or program. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include assigning at least one data key to the set of program data includes entering the data key into a data key record and linking the data key record to the program data record within Peterson and Eggers for the motivation stated above.

(C) As to claim 3, Peterson does not explicitly disclose the method of claim 2 wherein further including entering an identification code selected from the group consisting essentially of a patient I.D., a therapy I.D., and a fluid I.D., wherein the patient I.D. is a code identifying a patient, the therapy I.D. is a code identifying a therapy administered using a medical pump, and the fluid I.D. is a code identifying a fluid that is administered using a medical pump.

However, Eggers discloses further including entering an identification code selected from the group consisting essentially of a patient I.D., a therapy I.D., and a fluid I.D., wherein the patient I.D. is a code identifying a patient, the therapy I.D. is a code identifying a therapy administered using a medical pump, and the fluid I.D. is a code identifying a fluid that is administered using a medical pump (col. 10, line 62 - col. 11, line 7). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include entering an

identification code selected from the group consisting essentially of a patient I.D., a therapy I.D., and a fluid I.D., wherein the patient I.D. is a code identifying a patient, the therapy I.D. is a code identifying a therapy administered using a medical pump, and the fluid I.D. is a code identifying a fluid that is administered using a medical pump as disclosed by Eggers within the Peterson system for the motivation of downloading complicated drug delivery profiles to the system (col. 2, lines 3-10 and col. 11, lines 14-20).

(D) As to claim 6, Peterson in view of Eggers in view of Blomquist teach a computer storage medium containing a library of pump data, the computer storage medium being created by the method set forth in claim 1.

(E) Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view Eggers in view of Blomquist in view of Official Notice as applied to claim 3 above, and further in view of "Acute Health Solutions'" DoseWatch to use Multum's MediSource (hereinafter Medisource).

As to claim 4, Peterson does not explicitly disclose the method of claim 3 wherein the computer is in data communication with a scanner, the method further comprising.

scanning a bar code with the scanner; and

entering the bar code into the computer, wherein the act of assigning at least one data key to the

set of program data includes assigning the bar code to the set of program data.

However, MediSource discloses wherein the computer is in data communication with a scanner, the method further comprising.



scanning a bar code with the scanner; and entering the bar code into the computer, wherein the act of assigning at least one data key to the set of program data includes assigning the bar code to the set of program data (see abstract and page 2, paragraph 3). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include wherein the computer is in data communication with a scanner, the method further comprising: scanning a bar code with the scanner; and entering the bar code into the computer, wherein the act of assigning at least one data key to the set of program data includes assigning the bar code to the set of program data as disclosed by MediSource with the combined system of Peterson, Eggers, Blomquist and Official Notice for the motivation to insure association of the drug and concentration with a pump rate and an infusion amount (Abstract).

As to claim 5, Peterson does not explicitly disclose the method of claim 3 wherein the computer is in data communication with a medical pump, the method further comprising uploading a set of program data items from the pump.

However, MediSource discloses wherein the computer is in data communication with a medical pump, the method further comprising uploading a set of program data items from the pump (Abstract and Page 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to include a computer which is in data communication with a medical pump, the method further comprising uploading a set of program data items from the pump as disclosed by MediSource within the Peterson system for the motivation of insuring association of the drug and concentration with a pump rate and an infusion amount (Abstract).

(F) As per claims 7-19 and 23-24, these claims are substantially similar to claims 1-6 and are rejected on the same basis.

(G) Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of Eggers in view of Blomquist.

As per claim 26, Peterson teaches a pump for infusing fluid into a patient (Peterson: Figure 1 and Col. 3, Ln. 50-65), the pump comprising:

a housing (Figure 1 and Col. 3, Ln. 50-65);

a pump mechanism positioned within the housing (Figure 1 and Col. 3, Ln. 50-65);

memory positioned within the housing and configured to store a plurality of data items being patient-specific data items forming a set of program data, at least some of the data items establishing patient-specific parameters for controlling operation of a medical pump (Figure 1; Col. 1, Ln. 1-21 and Col. 3, Ln. 50-65)

and multiple program modules (Col. 3, Ln. 56-65 and Col. 4, Ln. 54-57).

Peterson does not explicitly disclose at least some of the data items establishing parameters for controlling operation of a medical PUDP entering a plurality of data items into a database on the computer.

However, Eggers discloses at least some of the data items establishing parameters for controlling operation of a medical pump (i.e. drug libraries customized for each user ...) (col. 10, line 62 - col. 11, line 45) entering a plurality of data items into a database on the computer, and assigning at least one data key to the set of program data, the data key identifying the set of program data (i.e. drug libraries customized for each user ...)(col. 10, line 62 - col. 11, line 45).

The combined teachings of Peterson in view of Eggers do not teach or suggest individualized, patient-specific data items, however, this feature is taught in Blomquist (Col. 11, Ln. 64-Col. 12, Ln. 10). At the time of the invention, it would have been obvious for one of

ordinary skill in the art to have modified the combined teachings of Peterson in view of Eggers in view of Official Notice with these aforementioned teachings from Blomquist with the motivation of having a means of allowing a user to download applications into a pump's flash memory without having to enter the information through a keyboard, as recited in Blomquist (Col. 12, Ln. 4-11).

(H) As per claim 27, in Peterson the program data includes the delivery rate for the patient (Peterson: Col. 4, Ln. 47-53).

(I) As per claim 28, in Peterson the program data identifies a therapy name (Peterson: Col. 4, Ln. 47-53).

(J) As per claims 29-31, are these claims are substantially similar to claims 1-20, 23-24 and 26-28, above, are rejected on the same basis.

(K) As per claim 32, the combined teachings of Peterson in view of Eggers teaches that the plurality of data items includes at least one data item selected from the group consisting of data items related to delivery schedules, medication doses, and boluses (Eggers: Col. 10, Ln. 62-66). The motivation for making this modification to Peterson is the same as that set forth above, in the rejection of Claim 26.

#### ***Response to Arguments***

8. Applicant's arguments filed May 26, 2009 have been fully considered but they are not persuasive. Applicants arguments will be addressed in sequential order as they were presented in the "Remarks" section filed on May 26, 2009.

(1) The applicants argue that the Office does not include any analysis or discussion about why it would have been obvious to modify the other cited references in view of Blomquist

to batch download individualized, patient-specific data. However, the Office does in fact provide the following motivation statement as being a reason that would motivate one of ordinary skill in the art to modify the cited references with the teachings from Blomquist:

“The combined teachings of Peterson in view of Eggers in view of Official Notice do not teach or suggest individualized, patient-specific data items, however, this feature is taught in Blomquist (Col. 11, Ln. 64-Col. 12, Ln. 10). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined teachings of Peterson in view of Eggers in view of Official Notice with these aforementioned teachings from Blomquist with the motivation of having a means of allowing a user to download applications into a pump's flash memory without having to enter the information through a keyboard, as recited in Blomquist (Col. 12, Ln. 4-11).”

(2) Applicants argue that the Eggers and the Blomquist reference teach away from a claimed combination of batch downloading and individualized, patient-specific data items. However, the Office would like to point out that the Blomquist reference clearly states the limitation of downloading individualized, patient-specific data items (Blomquist: Col. 11, Ln. 64-Col. 12, Ln. 10). This cited portion of Blomquist teaches batch downloading individualized, patient specific parameters and it states that one of the advantages of doing so is so that numerous, patient-specific inputs would not have to be individually entered or entered using the keyboard.

Applicants also state that in Col. 10, lines 15-17 of Blomquist there is a discussion of using prompts for entering a “particular setting.” However, the Office would like to point out that despite this disclosure in Blomquist, the Blomquist reference goes on to disclose that

individualized, patient-specific can be batch-downloaded into a memory (Blomquist: Col. 11, Ln. 64-Col. 12, Ln. 10).

As a further note the Office would like to point out that Applicants make the following statement in their response (Page 3, 1<sup>st</sup> Full Paragraph) “[a]lthough the claims may not be so limited, Blomquist also does not teach that any patient specific data is batch downloaded.” Therefore it seems that the applicants are admitting that the claims of the Blomquist reference disclose the embodiment of batch downloading individualized, patient-specific data.

(3) Applicants argue that the Eggers reference explicitly distinguished between loading libraries and data such as RATE and VTBI into a pump and that in Eggers a drug library is loaded in a pump with a PCMIa interface or similar data communication interface, while settings such as RATE and VTBI are entered directly and individually into the pump as discussed above. The applicants then go on to argue that both references teach individually entering data such as RATE, not batch-downloading such data items.

To respond to this argument the Office would like to point out that the Blomquist reference is relied on to show that the feature of batch-downloading individualized, patient-specific data is known in the prior art and the Eggers reference is not relied upon for this purpose.

Applicants also argue that both Eggers and Blomquist teach individually entering such data such as RATE, not batch-downloading such data items. However, the Office would like to point out that the claims do not explicitly claim the step of batch-downloading RATE. The claims implicitly recite the step of "batch-downloading individualized, patient-specific data items" and as noted above this step is taught in Blomquist (Col. 11, Ln. 64-Col. 12, Ln. 10).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Jerry O'Connor, can be reached at (571) 272-6787. The fax telephone numbers for this group are either (571) 273-8300 or (703) 872-9326 (for official communications including After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,

/Vivek D Koppikar/

Primary Examiner, Art Unit 3686

7/24/2009

